



August 23, 2021

**VIA ONLINE PORTAL**

Douglas Hibbard, Chief  
Initial Request Staff, Office of Information Policy  
U.S. Department of Justice, 6th Floor  
441 G St NW  
Washington, DC 20530

**Freedom of Information Act Request for Records from the Civil Rights Division's Voting Section**

Dear Mr. Hibbard:

This Freedom of Information Act (FOIA) request for records from the U.S. Department of Justice (DOJ) regarding the Biden Administration's apparent weaponization of the Civil Rights Division's (CRT) Voting Section is directed to you in accordance with the Department's "Find a FOIA Contact" webpage.<sup>1</sup>

America First Legal Foundation (AFL) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and social media platforms to educate the public.

As a part of this mission, we work to let the American people know what their government is doing, and who is doing it. The federal government is—at all levels—accountable to the people and to the electorate. But longstanding and apparently well-founded concerns regarding both the security of our election processes and systems and the extent and impact of voter fraud have stimulated great public interest in voting and election integrity.<sup>2</sup>

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<sup>1</sup> See [Find a FOIA Contact at DOJ | OIP | Department of Justice](#)

<sup>2</sup> See, e.g., *Letter from Sens. Elizabeth Warren, Amy Klobuchar, Ron Wyden, and Mark Pocan to Sarni Mnaymneh, Founder and Co-Chief Executive Officer H.I.G. Capital, LLC, et al* (Dec. 6, 2019) <https://www.warren.senate.gov/imo/media/doc/H.I.G.%20McCarthy,%20&%20Staple%20Street%20letters.pdf>. In December 2019, Sen. Warren and the other Democrats were, "[P]articularly concerned that secretive and 'trouble-plagued Companies,' owned by private equity firms and responsible for

DOJ has sued the State of Georgia for enacting legislation protecting the Constitution’s “one person, one vote” requirement.<sup>3</sup> However, DOJ’s suit seemingly lacks a competent statutory or Constitutional foundation. On June 11, 2021, the Biden Administration’s Attorney General promised to “double” the Voting Section’s head count on or before July 21, 2021.<sup>4</sup> Over a decade ago, the Heritage Foundation documented how the Voting Section had become an adjunct of the Democrat party.<sup>5</sup>

FOIA’s purpose is to ensure an informed citizenry, which is vital to the functioning of a democratic society, needed to check against corruption, and required to hold the governors accountable to the governed. 5 U.S.C. § 552; *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). AFL believes it is critical to educate the American public regarding the affiliations, backgrounds, and qualifications of the individuals who may be using the machinery of law enforcement to chill lawful State efforts aimed at ensuring fair, lawful, and transparent elections. Given strong and ongoing public debate and interest in matters of election law and voting rights, our request is self-evidently a matter of pressing public concern.<sup>6</sup> Therefore, AFL requests production of the following records within twenty days.

## I. Special Definitions

“DOJ” means the U.S. Department of Justice Office of the Attorney General, the Civil Rights Division, and the Voting Section, jointly and severally.

“CRT” means the Civil Rights Division within the DOJ.

“Georgia Case” means the case known as *United States v. The State of Georgia, et al*, Case 1:21-cv-02575-JPB (June 25, 2021) described and available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>

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manufacturing and maintaining voting machines and other election administration equipment, ‘have long skimmed on security in favor of convenience,’ leaving voting systems across the country ‘prone to security problems.’” *Id.* at 1; see also Jack McEvoy, *Connecticut Dem Indicted for Voter Fraud*, THE WASHINGTON FREE BEACON (Jul. 31, 2021), <https://freebeacon.com/elections/connecticut-dem-indicted-for-voter-fraud/>.

<sup>3</sup> *Reynolds v. Sims*, 337 U.S. 533 (1964).

<sup>4</sup> [Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights | OPA | Department of Justice](#) (June 11, 2021).

<sup>5</sup> Hans A. Von Spakovsky, *Abusing the Voting Rights Act*, NATIONAL REVIEW (Feb. 23, 2011), <https://www.nationalreview.com/2011/02/abusing-voting-rights-act-hans-von-spakovsky/>.

<sup>6</sup> According to a recent poll regarding voters’ top priorities, conducted by Georgetown University in June of 2021, “The number three issue overall is ‘voting rights.’” *NEW POLL: VOTERS RATE POLITICAL DIVISION AS TOP ISSUE FACING THE COUNTRY*, GEORGETOWN UNIVERSITY (Jun. 15, 2021), <https://politics.georgetown.edu/2021/06/15/new-poll-georgetown-institute-of-politics-and-public-service-releases-june-2021-battleground-poll/>.

“Policy Address” means the text of *Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights, Washington, DC ~ Friday, June 11, 2021*, posted at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>.

“Voting Section” means the Voting Section of CRT.

## **II. Requested Records**

A) For all Voting Section attorneys, both political appointees and career, who are at the GS Grade 12 Step 1 or higher:

- 1) The most recent resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or if that is not available, a recent resume contained within the agency’s records. AFL has no objection to the redaction of employee’s contact information, such as email, address, phone numbers etc.; however, prior employment, education, and descriptions of such experiences are not exempt and should be produced.
- 2) Any waivers issued to the individual pursuant to 18 U.S.C. § 208(b).
- 3) Any authorizations for the individual issued pursuant to 5 C.F.R. § 2635.502.
- 4) Any Ethics Pledge waivers, issued pursuant to Section 3 of Executive Order 13989 and Office of Government Ethics Legal Advisory 21-04, received by the individual.
- 5) Any ethics agreement executed by the individual; any Certification of Ethics Agreement Compliance; and any records relating to any violation by an individual of his or her ethics agreement.
- 6) Records reflecting any recusal determination made or issued for the individual.
- 7) Any mandatory public financial disclosures filed by the individual since January 1, 2017.

B) For all attorneys employed by, detailed or assigned to, and/or supervising the Voting Section (career and political appointees), all records of, and/or referring, regarding, or relating to communications with, any of the following persons between February 1, 2016, and the present:

- 1) ACLU
- 2) Common Cause
- 3) Brennan Center for Justice
- 4) FairFight
- 5) Future Forward USA
- 6) Demos
- 7) League of Women Voters
- 8) National Association for the Advancement of Colored People (NAACP)
- 9) NAACP Legal Defense and Educational Fund
- 10)La Raza
- 11)Lawyers Committee for Civil Rights
- 12)Mexican American Legal Defense Fund
- 13)LCV Victory Fund
- 14)Change Now PAC
- 15)Take Back 2020
- 16)America's Progressive Promise PAC
- 17)Priorities USA Action
- 18)American Bridge 21<sup>st</sup> Century
- 19)Piedmont Rising
- 20)NextGen Climate Action
- 21)Unite the Country
- 22)Forward Majority Action
- 23)Black PAC
- 24)Senate Majority PAC
- 25)Pacronym
- 26)Mark E. Elias
- 27)Any person having an email address containing "perkinscoie.com"

C) All records of, regarding, referring, or relating to expansion of the size and staff of the Voting Section, to include all communications regarding potential new hires, detailees, and/or the category or types of attorneys whom leadership will seek out to fill the new positions, and any preferred affiliations, background, or qualifications. The time frame for this request is January 20, 2021, to the present.

D) For any attorney employed by or detailed to the Voting Section, all records of, and/or regarding, referring, or relating to communications with, any person having an email address containing eop.gov. The time frame for this request is January 21, 2021, to the present.

- E) All records sufficient to identify every person employed by or detailed to DOJ, CRT, and/or the Voting Section, who analyzed, reviewed, researched, evaluated, approved the legal sufficiency of, and/or authorized the filing of the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- F) All records of, referring, regarding, or relating to communications between any person employed by or detailed to DOJ, CRT, and/or the Voting Section, and any person having an email address containing eop.gov, referring, regarding, or relating to the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- G) All records sufficient to identify each person who wrote, reviewed, revised, contributed to, or approved all or part of the Policy Address.
- H) With respect to the phrase “And some jurisdictions, based on disinformation, have utilized abnormal post-election audit methodologies that may put the integrity of the voting process at risk and undermine public confidence in our democracy” used in the Policy Address, all records sufficient to identify the following:
- 1) DOJ’s legal and/or operational definition of the word “disinformation”.
  - 2) What Attorney General Garland meant by the word “disinformation”.
  - 3) DOJ’s legal and/or operational meaning of the phrase “abnormal post-election audit methodologies”.
  - 4) What Attorney General Garland meant by the phrase “abnormal post-election audit methodologies”.
  - 5) All “jurisdictions” using “abnormal post-election audit methodologies that may put the integrity of the voting process at risk.”
  - 6) The “abnormal post-election audit methodologies that may put the integrity of the voting process at risk”.
  - 7) How the referenced “abnormal post-election audit methodologies” “may put the integrity of the voting process at risk”.
- I) With respect to the phrase “We will also partner with other federal agencies to combat election disinformation” used in the Policy Address, all records sufficient to identify the following:

- 1) DOJ's legal and/or operational definition of the phrase "election disinformation."
  - 2) What Attorney General Garland meant by the phrase "election disinformation."
  - 3) All measures taken by DOJ to "partner with other federal agencies to combat election disinformation."
  - 4) All "other federal agencies".
  - 5) The identities and titles of all DOJ political appointees who decide or define what is and what is not "election disinformation."
  - 6) The identities and titles of all DOJ career employees who decide or define what is and what is not "election disinformation."
  - 7) The identities of all DOJ contractors and consultants who decide or define what is and what is not "election disinformation."
- J) With respect to the phrase "Particularly concerning in this regard are several studies showing that, in some jurisdictions, nonwhite voters must wait in line substantially longer than white voters to cast their ballots" used in the Policy Address, all records sufficient to identify the following:
- 1) The "several studies".
  - 2) The "jurisdictions".
  - 3) DOJ's legal and/or operational definition of "nonwhite".
  - 4) DOJ's legal and/or operational definition of "white".
  - 5) When the Voting Section first became aware "nonwhite voters must wait in line substantially longer than white voters to cast their ballots."
- K) All records of communications referencing, regarding, or pertaining to the Policy Address between DOJ and any person with an email address containing "eop.gov".
- L) All records regarding any articles, comments, or other postings made by Voting Section staff on outside websites discussing any Voting Section or DOJ issues, personnel, or business—similar to the issues discussed in Chapter Four, Sections E and F of the March 2013 Office of the Inspector General Report

titled “A Review of the Operations of the Voting Section of the Civil Rights Division.”

- M) All records of any report, complaint, or referral made to the Office of the Inspector General regarding any harassment, bullying, ostracism, threats, or any other inappropriate behavior discussed in Chapter Four, Sections E and F of the March 2013 Office of the Inspector General Report titled “A Review of the Operations of the Voting Section of the Civil Rights Division” filed by any Voting Section staff from January 1, 2015, until the date this request is processed.

### III. Redactions

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then the DOJ must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, you should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems

within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

#### **IV. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your regulations, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available without charge for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records.

As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest. Other government agencies, including the Department of Homeland Security, the Department of Education, and the Department of the Interior, have acknowledged AFL is entitled to a fee waiver as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II) and granted our requests for waiver of search fees.

Second, waiver is proper as disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). The public has a significant interest in DOJ's compliance with and faithful execution of the laws, and in its respect for our citizens' Constitutional rights. The Public is also deeply interested in voting rights in the United States, with a recent poll by Georgetown University finding that it is voters' third most important issue.<sup>7</sup> Given the public interest in the subject and the DOJ's activity in this area, it is clear that disclosure of this information would “contribute significantly to public understanding of operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). AFL is thus entitled to a fee waiver as disclosure is in the public interest.

## **V. Expedited Processing**

AFL seeks and should be granted expedited processing. 28 CFR § 16.5(e) provides in relevant part:

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve... (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information; (iii) The loss of substantial due process rights; or (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

As explained below, the legal standard is satisfied here.

First, our website demonstrates AFL is primarily engaged in the dissemination of information regarding the activities and operations of the federal government.<sup>8</sup> We

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<sup>7</sup> GEORGETOWN, *supra* note 5.

<sup>8</sup> See e.g., America First Legal Foundation, *Political Leadership – Department of Agriculture*, available at <https://www.aflegal.org/oversight/165a6de55737d9b9b42bab8a596ec981>; America First Legal Foundation, *Political Leadership – Department of the Interior*, available at <https://www.aflegal.org/oversight/277ab33c83a47d6428b3dce6d1154104>; America First Legal Foundation, *Critical Race Theory at the Department of Education*, available at <https://www.aflegal.org/oversight/1ad2174bfcfa5f0d6ec83ee9c533306>; America First Legal

do this through a variety of means and methods, including FOIA requests and litigation, to educate American citizens regarding their Constitutional and legal rights.

Second, given the pendency of the Georgia Case, there is obviously an urgency to inform the public, the Court, and the defendants about potential political bias among career attorneys in CRT and the Voting Section. Indeed, the Georgia case seems designed to prevent the State from taking steps to ensure voter integrity and protect public faith in its elections, and to facilitate ballot harvesting and other practices rife with fraud. This puts Georgia citizen's constitutional right to vote, including the "one-person, one-vote" principle as articulated by the Supreme Court in *Reynolds v. Sims* and subsequent cases, at risk.<sup>9</sup>

Third, government policy is almost inevitably the product of personnel, especially when the biases and preferences of political appointees are aligned with the biases and preferences of government bureaucrats. If DOJ, CRT, and/or the Voting Section are at best something less than a fair referee, or at worst actively working with Democrat political interests and operatives to protect Democrat politicians, then the public needs to know now. The biased and illegitimate exercise of law enforcement authority by CRT and/or the Voting Section to prevent States from enacting effective and fair election integrity laws and to facilitate ballot harvesting and other forms of fraud will necessarily result in widespread due process violations in Georgia and nationwide.

Finally, there is widespread and exceptional interest in the possibility DOJ lacks institutional commitment to non-partisan enforcement of election laws. The public has a right to know whether the attorneys in CRT, and the Voting Section are professionals committed to the Constitution and the rule of law, or activists working to protect the Democrat Party and the Biden Administration. Frankly, it is difficult to imagine a more fundamental threat to public confidence in the federal government than a politicized DOJ, CRT, and Voting Section.

## VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

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Foundation, *DHS Immigration Policy*, available at <https://www.aflegal.org/oversight/17eb4c1c84e95cc81f1016d31e12e519>.

<sup>9</sup> *Reynolds v. Sims*, 337 U.S. 533 (1964).

## VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you.

/S/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation